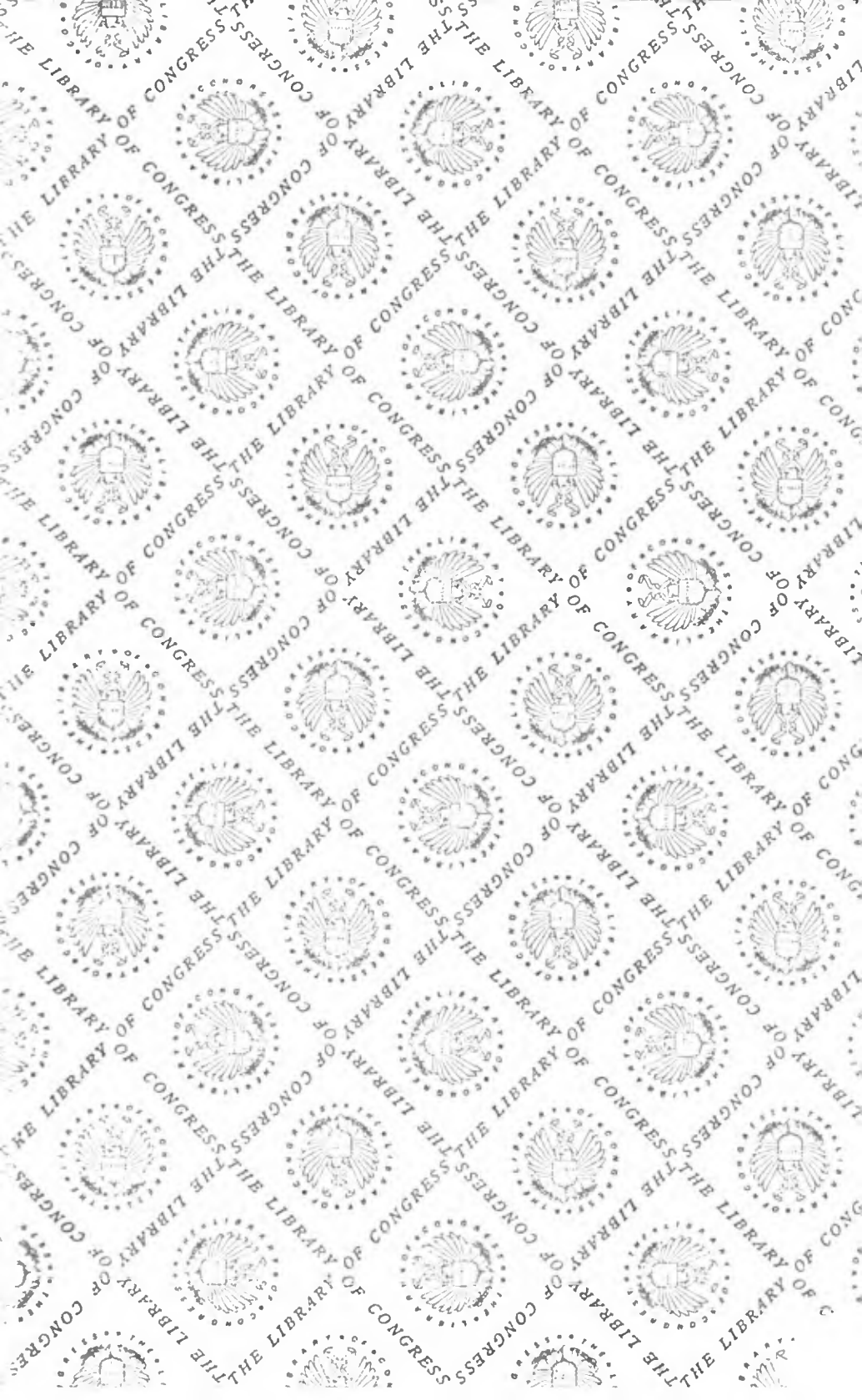


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# SALARIES OF ATTORNEYS IN THE DEPARTMENT OF JUSTICE

U.S. Congress. House.

HEARING

BEFORE

SUBCOMMITTEE NO. 5

OF THE

COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

**H.R. 6242, H.R. 6598, and H.R. 6600**

TO AMEND SECTION 508 OF TITLE 28 OF THE UNITED STATES  
CODE, RELATING TO ATTORNEYS' SALARIES

JUNE 16, 1961

Printed for the use of the Committee on the Judiciary

SERIAL NO. 4



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# SALARIES OF ATTORNEYS IN THE DEPARTMENT OF JUSTICE

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FRIDAY, JUNE 16, 1961

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 5 OF THE  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C.

The subcommittee met, pursuant to notice, in room 346, Old House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding. Present: Hon. Byron Rogers, of Colorado, Hon. William M. McCulloch.

Also present: William R. Foley, general counsel, and William H. Crabtree, associate counsel.

MR. RODINO. The Subcommittee No. 5 will come to order.

We will hear testimony this morning on legislative proposals relating to attorneys' salaries in the Justice Department.

(The bills follow:)

[H.R. 6242, 87th Cong., 1st sess.]

A BILL To amend section 508 of title 28, United States Code, relating to attorneys' salaries

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 508 of title 28, United States Code, is amended to read as follows:

"The Attorney General shall fix, without regard to the Classification Act of 1949, as amended, the compensation of United States attorneys, assistant United States attorneys, special assistants and other attorneys employed in the Department of Justice within the following limitations:

"United States attorneys, not more than \$20,000; and

"Assistant United States attorneys, special assistants and other attorneys employed in the Department of Justice, not more than \$19,000."

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[H.R. 6598, 87th Cong., 1st sess.]

A BILL To amend section 508 of title 28, United States Code, relating to attorneys' salaries

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 508 of title 28, United States Code, is amended to read as follows:

"The Attorney General shall fix, without regard to the Classification Act of 1949, as amended, the compensation of United States attorneys, assistant United States attorneys, special assistants and other attorneys employed in the Department of Justice within the following limitations:

"United States attorneys, not more than \$20,000; and

"Assistant United States attorneys, special assistants and other attorneys employed in the Department of Justice, not more than \$19,000."

## 2 SALARIES OF ATTORNEYS IN THE DEPARTMENT OF JUSTICE

[H.R. 6600, 87th Cong., 1st sess.]

A BILL To amend section 508 of title 28, United States Code, relating to attorneys' salaries

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 508 of title 28, United States Code, is amended to read as follows:

"The Attorney General shall fix, without regard to the Classification Act of 1949, as amended, the compensation of United States attorneys, assistant United States attorneys, special assistants and other attorneys employed in the Department of Justice within the following limitations:

"United States attorneys, not more than \$20,000; and

"Assistant United States attorneys, special assistants and other attorneys employed in the Department of Justice, not more than \$19,000."

Mr. RODINO. We are glad to welcome as our first witness this morning the Honorable Byron R. White, Deputy Attorney General of the United States.

Mr. White, we are pleased to have you and know that the information you have to present to this committee will be of invaluable assistance to us in deciding this question which we know is of such urgency to your Department.

Before you proceed, Mr. Attorney General, I will ask the ranking minority member, Mr. McCulloch, if he has a few words to say.

Mr. McCULLOCH. Thank you, Mr. Chairman.

Since we have informally discussed this matter on an occasion or two down in the Justice Department, I would like to say, Mr. White, we are glad to have you before the subcommittee this morning.

The question of adequate compensation for Government attorneys in my opinion is of vital importance. We want our public servants to be adequately paid and we want them to be paid at a scale which will permit us to keep those who wish to make Government service a career. But, we cannot expect outstanding lawyers to make careers in Government service if the penalty for remaining is inadequate compensation.

Weighed against this and some other considerations is the fact that we have a scale of compensation established by the Classification Act. Enactment of the proposed measure will be an exception to the congressional policy established in that act. Therefore, I am interested in learning this morning the full consequences which will result from making the exception proposed in the bill, whether we will be establishing an unwarranted exception and whether there are alternative methods of achieving the same result.

But by way of repetition, there is a real problem and I am sure you will find this subcommittee and the members of the full committee most sympathetic to your problem.

Mr. ROGERS. Mr. Chairman?

Mr. RODINO. Mr. Rogers.

Mr. ROGERS. May I add a special welcome to Mr. White since he is a voting constituent of the city and county of Denver and a lawyer of longstanding and sound reputation in the area I have the privilege to represent.

I regret he was not able to be here at the time the Attorney General was because of other business. I understand he was sick in the hospital and that may be due to the fact we worked him too hard at the outset.

I am glad to see you in good health, Byron, and I know that you will do a fine job.

Mr. WHITE. Thank you, Mr. Rogers.

Mr. RODINO. We are also glad to welcome and recognize the presence of the Administrative Assistant Attorney General, Mr. S. A. Andretta, and Mr. William Geoghegan, the Assistant Deputy Attorney General.

We appreciate the presence of you gentlemen here this morning and now, if you will proceed, Mr. White.

**STATEMENT OF BYRON R. WHITE, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY WILLIAM A. GEOGHEGAN, ASSISTANT DEPUTY ATTORNEY GENERAL, AND S. A. ANDRETTA, ADMINISTRATIVE ASSISTANT ATTORNEY GENERAL**

Mr. WHITE. Thank you, Mr. Chairman.

We do appreciate your remarks and, Mr. McCulloch, we will try to comply with your wishes.

It is a great pleasure to be here before you gentlemen this morning and we have a prepared statement I would like to read.

The Department of Justice strongly supports the proposed amendment to United States Code, title 28, section 508, which would allow the Attorney General the same discretion in fixing the salaries of attorneys working with the Department at the seat of the Government as he now enjoys with respect to the determination of the salaries of U.S. attorneys and their assistants. The Department's position is based upon the importance of the functions assigned to the Department and the difficulty of hiring and promoting lawyers within the existing statutory framework.

The Department represents the United States in all cases in the Federal courts in which the United States or any department or agency thereof is a party. Out of 72,691 cases pending in the Federal courts on June 30, 1960, the United States was a party in 25,718 of these cases, or approximately 35 percent. The United States, moreover, was a party in approximately half the cases pending before the Supreme Court. Although many lawyers are employed throughout the Federal Government, whenever the United States sues or is sued in court, the Department of Justice provides the lawyer to handle the suit. Many disputes, of course, are settled in the departments or agencies. However, it is the big case, the hard case, or the case involving important policy that comes to the Department of Justice.

Not only are major policy and legal questions involved in many of these cases for which the Department has responsibility, but also the amounts of money involved are rather staggering. The Tax Division of the Department of Justice, for example, is defending refund suits brought by taxpayers involving \$489,220,708, and suing to collect \$111,640,161 in various cases against taxpayers. The Civil Division is defending suits in which \$807,292,332 is claimed against the Government. That same Division is pressing claims on behalf of the United States against others in suits in which \$180,936,383 is at stake. The Lands Division has responsibility for defending claims before the Indian Claims Commission in excess of a billion dollars and is engaged in condemnation proceedings in which more than \$50 million is involved.

#### 4 SALARIES OF ATTORNEYS IN THE DEPARTMENT OF JUSTICE

The Department of Justice is also the chief law enforcement agency of the United States and is responsible for investigating and prosecuting violations of all the Federal criminal laws. The Federal Bureau of Investigation investigates and the Criminal Division of the Department of Justice tries or supervises the trial of the resulting cases where the ordinary criminal laws are involved. The Internal Security Division handles violations of the laws affecting the national security. The Antitrust Division originates, tries and disposes of the very important violations of the antitrust laws. These cases have a major effect upon the economic structure of our country, and are of tremendous importance to the proper functioning of our free enterprise system. The Civil Rights Division is concerned with the civil rights laws and with guaranteeing to all our citizens that their rights under these laws and the Constitution are not abridged. There is little doubt that the success or failure of the Department of Justice in enforcing the laws of the United States has a major impact upon our society.

The Department of Justice, through its Office of Legal Counsel, is also the legal adviser to the President and the other departments and agencies of the Federal Government. This Office furnishes formal and informal opinions dealing with the most complex and sensitive legal problems.

The Department of Justice, through the office of the Deputy Attorney General, also analyses and comments upon legislation when it is requested to do so by Congress, and we like to believe that the exercise of this responsibility is of significant assistance to the Congress. All the divisions, moreover, from time to time provide assistance to the Members of Congress in answering mail from constituents concerning subjects which are related to the work of the particular division.

To perform these important functions, 1,709 lawyers are now employed by the Department of Justice. Of these lawyers, 722 are in the offices of U.S. attorneys in the various judicial districts of the United States, Guam, Panama, and Puerto Rico. Of the remaining group of attorneys, 865 are employed at the seat of the government in Washington, and 122 lawyers are in the field offices of the Department.

Originally, and until 1949, by one method or another, the Attorney General in effect had the authority to set the compensation of most of the attorneys in the Department of Justice. The Classification Act of 1949, however, required that the attorneys in the Department of Justice be classified in grades and set the authorized salaries for each grade. In 1955, title 28, section 508, U.S.C. was amended to return to the Attorney General the authority to set the salaries of the U.S. attorneys and their assistants within certain limits—\$12,000 to \$20,000 for U.S. attorneys and up to \$15,000 for assistants to the U.S. attorneys. The attorneys at the seat of the government and in the field offices remained subject to the Classification Act.

The Department now strongly urges that section 508 be amended again, this time to give the Attorney General the authority to set the salaries of the lawyers in the Department of Justice at the seat of the Government without regard to the Classification Act. In other words, all the Department now asks through the legislation under consideration is that the Attorney General be granted the same discretionary authority in fixing the salary of the men working here in Washington (and in the Department field offices), that he has with respect to the

compensation of U.S. attorneys and their assistants. We support the amendment because we are sure that it will be of significant aid in securing and retaining amply qualified lawyers to handle the important litigation of the Government.

It may aid the committee and put the following remarks in context to some extent to set out here the number of lawyers in each grade as of May 31, 1961, and the initial and top pay bracket for the grade:

I would point out that the most numerous category is in grade 13, starting at \$10,635 and going to \$11,935.

Grade <sup>1</sup>	Attorneys	Initial pay	Top pay <sup>2</sup>
7.....	6	\$5,355	\$6,345
9.....	92	6,435	7,425
11.....	122	7,560	8,860
12.....	107	8,955	10,255
13.....	170	10,635	11,935
14.....	167	12,210	13,510
15.....	156	13,730	15,030
16.....	29	15,255	16,295
17.....	9	16,530	17,570
18.....	4	18,500	18,500

<sup>1</sup> The Department of Justice has no lawyers in grades 8 and 10, as the Civil Service Commission has omitted them from the professional series.

<sup>2</sup> Does not include small longevity increases which may be received upon completion of 10 years of service in a grade and 3 years of continuous service at or above the maximum rate of the grade.

It will be noted that as of May 31 of this year only 42 lawyers were legally entitled to make more than \$15,030 and only 4 made the top figure of \$18,500. These figures are exclusive of the Presidential appointments in the Department. Furthermore, for a grade 15 lawyer to be making as much as \$15,030, he must have been in grade 15 for at least 6 years.

This committee is knowledgeable in the law and legal matters and has seen much of lawyers. It is unquestionably true that lawyers in the Department of Justice have as their adversaries the best and most highly paid lawyers which private citizens and companies can hire. It is also doubtful that the Department can expect to compete compensationwise with the rewards which a good lawyer can have in private practice. The Department must concentrate on those who have ample ability and who also have a devotion to the public service. But in any event, it must provide salaries which will enable attorneys and their families to exist.

In the brief few months during which I have been in office, I have noted that in the past few years the Department has had considerable difficulty in retaining its better lawyers, especially its better trial lawyers who have been handling and trying the most important and complex cases. In fiscal year 1959, the Department lost 36 lawyers who had been with the Department more than 5 years. In 1960, it lost 46 lawyers in this category and, in the first 11 months of the current fiscal year, it has lost 46 lawyers who had been with the Department more than 5 years, 23 of whom had been with the Department more than 15 years. It should be pointed out that all of the so-called super-grade positions in the Department are assigned to supervisory positions. No active trial lawyer, no matter what his responsibility, is paid more than \$15,030.

In so many of these cases, it has been the compression in grade 15 which has been the stumbling block to keeping these lawyers. It

would have taken only a reasonable increase in pay to retain their services. The suggested amendment to section 508 will not be any means prevent many experienced lawyers from leaving the Department of Justice, but it will permit us to retain some of those who otherwise would have left, these being those who have a great interest in the Department's work but who, with their families and children imposing educational and other financial demands which must be met, simply cannot make ends meet.

Mr. RODINO. At this point, I would like to point out that counsel advises me that a recent report of the ABA indicates that the general average income of lawyers throughout the country is under \$12,000.

Mr. WHITE. I am quite aware of that, Congressman.

Mr. RODINO. This, of course, means a starting lawyer anywhere else, in whatever part of the United States we might be dealing with, there might not be a real wealth of legal cases.

Mr. WHITE. Yes, I think unquestionably, Mr. Chairman, statistics on the income of lawyers are very interesting and very meaningful, but in order to have this average of \$12,000, even that much, it is perfectly obvious and I think statistics will show that the income of lawyers, or of certain lawyers, range rather high.

Mr. RODINO. Yes.

Mr. WHITE. It is against these particular people in the trial practice whom the Department of Justice lawyers must compete with.

In the antitrust case, you are competing with and going up in the courtroom against the most experienced, highly paid counsel in the United States. We never suggest we would hope to pay lawyers in the Department of Justice what their adversaries are paying. However, we must retain more of the amply qualified lawyers who have a great interest in the Department's work. We know that some of the lawyers who have left even this year would have stayed if they could have had a thousand dollars or two thousand more.

We are not going to keep them all, but there still will be people going out. We have to be able to keep a few more of them, and if we can keep those with great interest in public service, that is the jewel we hope that we can keep.

Mr. RODINO. You are absolutely correct. If the average income is about \$12,000 for an ordinary lawyer throughout the United States, he is certainly not going to come to the Justice Department in any case.

Mr. WHITE. I do not know. Perhaps I should know but I do not know what the average income is of the lawyer working for the Department of Justice. I think it is \$10,000. I believe it is \$10,000 average income.

Mr. RODINO. I am astounded that you have a grade 7 shown on your list with a top salary of \$6,345.

I do not know how you enlist them.

Mr. WHITE. A lot of our hiring of lawyers is of those people fresh out of law school. There is a fair range at what you can hire this particular type of lawyers for, especially if they are not interested in going to other places in the country but have a particular interest in Washington.

Mr. McCULLOCH. As a matter of fact, Mr. White, the authorized salary for grade 7 for a young man just out of law school is considerably higher than the national average, in private practice, is it not?



Mr. WHITE. I do not think it is. We have no really great argument with what we can pay beginning lawyers. We are quite satisfied with it and we are able to get our people——

Mr. McCULLOCH. You are particularly concerned with the three upper grades?

Mr. WHITE. I was going to say something about the new lawyers. The beginning salaries for lawyers in the Department are good and the Department has little trouble in recruiting amply qualified graduates from our law schools. The honors program provides the Department with a very bright, energetic group of young but relatively inexperienced lawyers. However, the great bulk of these new hands leave the Department in 2 or 3 years. For example, in the category of men with less than 5 years' experience with the Department, 73 resigned in fiscal 1959, 74 in 1960, and 48 during the first 11 months of this fiscal year. If the Department is successfully to handle litigation for the Government it must retain more of these young lawyers for a greater length of time, and an ample number of them for their entire career. As our older lawyers appointed in the late thirties and early forties retire, and these are fine lawyers, we must replace them to a large extent with well-trained attorneys from within the Department.

The rigidity of the Classification Act makes it extremely difficult to run an efficient law office, which is, in fact, what we are at the Department of Justice. I would like to cite a few of the problems which the act creates:

(1) In the first instance, the act establishes a very specific salary structure which is associated with various grades. For all practical purposes, the Department must hire young lawyers just out of law school or with a few years' experience in private practice at annual salaries of \$6,435 (GS-9), \$7,560 (GS-11) or \$8,955 (GS-12). We would prefer a much wider latitude and discretion in hiring this group of lawyers at salaries ranging from \$6,000 to \$9,000, depending upon their academic background, practical experience, and other factors.

(2) Subsequent to hiring an attorney, the Classification Act, together with the Whitten amendment, severely restricts our freedom in rewarding merit through salary increases. An attorney may only be promoted a grade at a time and must be in grade a year before he is eligible for promotion. We would like frequently to be able to increase a man's salary more often, but in smaller amounts than is now allowed. For example, we believe that in many instances two \$500 promotions do a lot more for an attorney's morale than one more or less automatic increase of approximately \$1,000.

(3) The Classification Act in effect restricts pay increases based solely on merit, and (aside from step and longevity increases) under the present system a pay increase can be effected only through an elevation in grade. This in turn may be justified under the act only if the man is assigned additional or different duties. As a consequence a great deal of time is involved in creating job descriptions which admittedly are, in most instances, quite contrived. What we seek by this proposed legislation is to reward a good trial attorney from time to time, not because his duties or responsibilities have changed, and not with reference to a classification system based

upon language that at best awkwardly describes the duties of an attorney, but simply because he has demonstrated increased proficiency in his work.

(4) We feel the rigidity of the classified pay system when we attempt to employ an experienced trial attorney as we frequently must do. The highest grade at which we can hire such a lawyer is GS-15 with a salary of \$13,730 and after 6 years, through step increases, he could earn \$15,030. Surely this is not an attractive proposition to put to an experienced trial attorney.

(5) We are, in short, faced with the problem of inducing the attorney to stay with the Department who has 5 or 6 years' experience and is in the 30- to 35-year age group. He is probably a GS-13 making \$10,635 a year. He sees before him perhaps one more relatively quick promotion to GS-14 and \$12,210, following which he knows pay increases will come considerably more slowly and be the result not so much of increased proficiency in his work as the simple passing of time. And at the end of it all is a salary maximum of approximately \$15,000. It is no wonder that so many of these fine young attorneys decide at this point in their careers to leave the Government service for the rewards of private practice.

It may be that some of us are too fresh from private practice, but it does not appear to us that lawyers and their work are proper subjects for control under the Classification Act.

The Hoover Commission had this to say about the work of lawyers in relation to the Classification Act:

The present system of classification of attorney positions is based upon civil service job descriptions. Only incidentally do these descriptions conform to the actual work being done, yet they provide one of the criteria for promotions and salary increases. Congress has excepted U.S. attorneys and their assistants from the statute's relatively restrictive standards. Because of the nature of their work, and the fact that nonattorneys cannot evaluate elements of it which they do not understand, it is difficult to apply general personnel description standards to attorney positions.

In supporting this amendment, the Department is not striking for a general pay increase for lawyers. Nor do we suggest that the Department be staffed only with the unusually gifted lawyer. Finally, we do not expect that the flexibility provided by this amendment would affect significantly all lawyers in the Department. However, we would expect that the amendment would give the Attorney General the flexibility required to retain in the Department more of the well-qualified lawyers who are now departing; to promote and pay lawyers based on their abilities and their performance; and to pay well-qualified trial lawyers, who day in and day out are doing or supervising the important litigation for the Government, more money than they now are legally entitled to make. We would like to perform as you expect us to perform and this amendment will help us to do so.

I wish to emphasize that through the amendment to section 508 the Department seeks the same discretion with respect to fixing the salaries of its attorneys working at the seat of the Government and in the field offices as the Attorney General now has with respect to the salaries of the U.S. attorneys and their assistants. There has been no suggestion from any source that this discretion has ever been abused, and it is interesting to note in fact that the average salary of the assistant U.S. attorneys is approximately \$2,000 less than the average salary of the lawyers working with the Department who are subject to the Classification Act.

You may ask whether or not this amendment will cost the Government money. Of course, this amendment cannot increase the budget of the Department for this or any other year. It may be, as a result of the ability to pay more lawyers more than \$15,000, we shall be requesting an increased budget in years to come. But the increase, in our opinion, will not be substantial. On the other hand, it may be that, as a result of retaining more experienced lawyers, the overall efficiency of the Department will be increased so that the total number of lawyers may be reduced. And certainly, the retention of more experienced lawyers will result in the more effective handling of the Government's litigation, involving as it does literally billions of dollars.

Mr. McCULLOCH. Mr. Chairman?

Mr. RODINO. Mr. McCulloch.

Mr. McCULLOCH. Might I interrupt there?

Referring to the previous paragraph of your statement, Mr. White, I was impressed by the salaries of U.S. attorneys and their assistants.

As I recall, they are now required to give their full time to their official duties as are the attorneys employed by the Department of Justice, in Washington.

Mr. WHITE. Yes, sir; and we have no exception to this across the country although we have been requested this year to make such exceptions.

The only time we are making exceptions at this point is during the transition period when a lawyer is going into office. He has a drawer full of cases and it would be unfair to the client to turn that over to another attorney. As long as there are not conflicts involved, he can finish those cases, but we would like him to get rid of all of the cases he can to the other lawyers.

The committee may also ask why this amendment singles out the lawyers in the Department of Justice for special treatment. We would like to point out that the Department does the litigating for the Government. The Department's lawyers are the last resort. These lawyers appear in court and supervise the most difficult litigation involving major questions of policy, law, and economics. It has long been the practice in the legal profession to distinguish between lawyers who litigate and those who do not. If any group of lawyers with the Government should be amply qualified, those in the Department of Justice should warrant particular treatment. In all other departments and agencies, lawyers and the practice of law are ancillary to the principal function of the department or agency. Only in the Department of Justice are lawyers and the practice of law the very essence of the operation.

We earnestly solicit your favorable consideration and approval of this legislation.

Congressman McCulloch, in regard to your remarks at the outset of this hearing, we are well aware that there are studies going on and efforts being made in the whole area of the pay of Government employees including lawyers.

We are also very much aware that there are studies going on in regard to a classified service for lawyers.

I was privileged to hear the Chairman of the Civil Service Commission speak the other day at lunch and I had the privilege of asking him some questions afterward. I am delighted that these studies

are going on because it is admitted that the present system is unsatisfactory as far as lawyers are concerned here in the Government, both in terms of classification and in terms of pay.

I think this kind of a general study and overall effort is very good and we welcome it and will cooperate with it. This may take some time and it may be a fairly long-range goal. Meanwhile, we think that in the Department we are hurting and we think that this amendment will give us some flexibility. We do not expect by any means that the Department of Justice will be in chaos because of discretion granted to the Attorney General. We have our own pay plan and we shall keep our own pay plan, but we shall have some flexibility to reward some lawyers for good performance and we will have some flexibility to try to keep a few of these exceptional people who want to go out and do private practice. Passing this amendment and adopting this amendment will not, of course, prevent or be any obstacle at all to the more general study or the more general revision of the treatment of lawyers in the Government. We would welcome this overall study and would like to cooperate in it. We simply feel that meanwhile, especially now during the change of administration and in a year or so afterward when the job of staffing and restaffing is so important and there are some reorganizations going on, that the ability to retain lawyers and keep good lawyers is of critical importance to the country. It is your business and it is our business. We think this will be a significant help in doing the kind of a job you would like us to do.

Mr. RODINO. Are there any questions?

Mr. ROGERS. No questions.

Mr. RODINO. Mr. McCulloch?

Mr. McCULLOCH. I have a question, Mr. Chairman. About when did the law become effective that authorized the so-called supergrades, grades 16, 17, and 18?

Mr. WHITE. I think it was 1949, the Classification Act, but I do not know. It had supergrades in it but I frankly do not know whether from time to time there have been statutory increases in the number of supergrades.

Mr. McCULLOCH. Counsel here tells me that probably 3 or 4 years ago this law became effective.

Mr. CRABTREE. I recall approximately 3 years ago a certain number of these positions were made available for the Department of Justice and that they went principally to men who were section chiefs at that time. I know that in the Antitrust Division, just before I left the Antitrust Division, we had two grade 16's which were available for section chiefs.

Mr. WHITE. I did make the point that any of the supergrades which we have in the Department of Justice are used and assigned to supervisory positions. None of our active trial lawyers, as I say, is higher than grade 15 and is making any more than around \$15,000. We think that we are not going to be able to retain the kind of trial lawyers in these particular categories of important litigation, if we cannot pay them more than \$15,000.

Mr. McCULLOCH. Were the assignments made in the same manner during the previous administration, that is, no trial lawyers were included among the three top grades?

Mr. WHITE. I think their specific job descriptions were written for every lawyer who held more than a grade 13 or grade 14. Anyway, all grade 15's and supergrades have specific job descriptions. I think to warrant a supergrade you are going to have to have supervisory duties.

Mr. McCULLOCH. Did the attorneys in grades 16, 17, and 18 in the previous administration have trial duties assigned to them or were they assigned supervisory duties with little or no responsibility in the active trial of cases?

Mr. WHITE. My impression is that we have not changed the situation at all, which was in existence when we came into the Department of Justice.

Mr. McCULLOCH. That answers the question completely as far as I am concerned.

Might I properly conclude from your written statement that we could not solve the problem by increasing the number of authorized personnel within these three top grades?

Mr. WHITE. No, I do not think it would solve our problem, Congressman. You would still have to go on and authorize what kind of duties would warrant a supergrade.

Mr. FOLEY. A job description?

Mr. WHITE. A job description.

Mr. McCULLOCH. It does not give you enough flexibility in rewarding ability and assigning attorneys where their ability is the most effective?

Mr. WHITE. Right.

Right now an ordinary good trial lawyer's job is not the kind of a job under the present system that warrants a supergrade and unless you had some broadening of the standards for the person who deserved a supergrade it would not solve our problem. Furthermore, as I pointed out, under the present system, while the rigidity in increasing pay is objectionable, we do not object to the basic idea of equal pay for equal work. We do object, however, to equal pay for unequal work.

Mr. McCULLOCH. I think that is a very good statement.

It is your studied judgment, I take it, and the studied judgment of your advisers, that this is the only effective way we may proceed to bring about the desired results?

Mr. WHITE. This is the only effective way we know of short of some general overall satisfactory revision of the treatment of lawyers' pay all over the Government. Right now on the spot we have the critical problem in the next year or two in the Department of Justice and this is the only way we know of—

Mr. RODINO. In other words, this is the immediate problem you want to treat with?

Mr. WHITE. Yes.

Mr. RODINO. The overall picture we are willing to wait on and that can only be satisfied as a result of further study but this other question is something that is urgent right now?

Mr. WHITE. It is urgent now and, of course, we have had 4 or 5 years of experience or 6 years of experience with this in the U.S. Attorneys' offices. We have our own standards and our own pay plan and it has worked very well. We can get a good deal more flexibility in finding and keeping ability.

Mr. McCULLOCH. The Appropriations Committees of the respective branches of Congress will ultimately have control of this matter if the legislation is abused.

Mr. WHITE. For instance, this year we expect we are going to have to stay within our budget and next year we will have to stay within our budget. Everything we do we will have to justify to the Appropriations Committee and we think we can get an awful lot of good out of this amendment without costing the Department of Justice another dollar.

Mr. McCULLOCH. I am very glad to hear you say that and my prior question did not mean to leave any inference whatsoever that it would be abused by the present Attorney General or by you or by your administrative assistants. We all must take into consideration the possibilities for the future, either for 8 or for 48 years hence.

Mr. WHITE. I think that is a very valid consideration and I would predict it would cost the Department a little money but I do not think it will be a large sum. I think that even if it did not cost us any more money we could get an awful lot of good out of it right now in the Department.

Mr. FOLEY. Mr. White, aside from the compensation question, would this amendment affect the civil service status of any of these men?

Mr. WHITE. No. They are all schedule A, except lawyers and if any of them has status or veteran's preference, they are certainly going to keep it. Otherwise, I do not think it affects their status at all.

Mr. FOLEY. Just one other thing. Perhaps Mr. Andretta is the more able to answer this.

I know that about 1955 there was an exemption for U.S. attorneys in the congressional and judicial salary bill which this committee processed. When the Classification Act of 1949 was under consideration what was the position, if you can tell us, of the Justice Department at that time to bring lawyers under the Classification Pay Act?

Mr. WHITE. What was the position as to whether we would or would not?

Mr. FOLEY. Yes. Did the Department oppose or favor bringing them under the Classification Act? Do you remember Mr. Andretta?

Mr. ANDRETTA. We did not think it applied so we did not do anything about the bill when it was being considered and much to our concern when the 1949 act passed and applied to all officers, we got an interpretation that it applied to the Department lawyers. Then we had no choice but to put them under it.

Mr. RODINO. Thank you very much.

Mr. CRABTREE. Mr. Chairman?

Mr. RODINO. Yes, Mr. Counsel.

Mr. CRABTREE. Mr. White, you mentioned that the Attorney General's pay scale with respect to U.S. attorneys and their assistants has worked out very satisfactorily. I wonder if it would be helpful for the subcommittee to have a copy of that schedule, the pay ranges which are presently paid to U.S. attorneys.

Mr. WHITE. We can certainly send it up to you.

(The information referred to follows:)

*Annual salaries*

U.S. attorneys: <sup>1</sup>

4 at \$20,000.

6 at \$18,000.

21 at \$17,500.

26 at \$16,000.

34 at \$13,700 to \$15,000.

Assistants: <sup>1</sup>

<sup>1</sup> Based on rank of district in volume of work, complexity, population, size of staff, number of judges, etc.

11 at \$13,000.

10 at \$12,900.

1 at \$12,500.

6 at \$12,400.

1 at \$12,000.

All others range from \$5,500 to \$12,000.

Mr. CRABTREE. Do you have proposals worked up which you might adopt in the Department of Justice in the event this bill becomes law?

Mr. WHITE. Not in final form. I think, in the main, these people are going to stay close to their same grades, but there is not going to be the rigidity limiting when you can increase them and by how much. There are going to be people now in the same grade who have been there the same length of time but who are not going to be making the same money.

Mr. CRABTREE. I understand that, but the point I was trying to make is that it might be helpful for the subcommittee to have that document. Would you care to make a copy of the proposal available to the subcommittee?

Mr. WHITE. As I said, we will send you up something on it.

Mr. CRABTREE. Thank you.

Mr. RODINO. Thank you very much.

Mr. ROGERS. May I make one inquiry, Mr. Chairman?

Mr. RODINO. Mr. Rogers.

Mr. ROGERS. As I understand it, this only applies to the Department of Justice as it relates to attorneys' salaries and has nothing to do with the administrative courts and their respective salaries; is that correct?

Mr. WHITE. No, the Administrative Office of the Courts is a separate thing and not within the Department of Justice.

Mr. RODINO. Mr. White, one other question: Does the Department ever retain special counsel for special cases from the outside?

Mr. WHITE. We do it in two or three contexts. One, special assistants to U.S. attorneys who are hired. Also special assistants to the Attorney General and this is one of our major problems which was not mentioned specifically but which this thing would solve. When you have special litigation which requires you to go outside to hire a man to handle, we have our problems in paying the special assistant.

Mr. FOLEY. What would you pay?

Mr. WHITE. We pay \$15,000.

Mr. RODINO. That is the top?

Mr. WHITE. Yes, sir.

Mr. FOLEY. You do not retain them on a per diem basis as in private practice?

Mr. WHITE. The limit is \$15,000 per year and if he is going to be employed for as much as a year, all you can pay is \$15,000.

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If it is for a shorter period of time, the rate of compensation, if carried out annually, might be more than \$15,000.

Mr. RODINO. I see.

Mr. CRABTREE. In addition to that, you have the problem of conflict of laws?

Mr. WHITE. Conflict of interest?

Mr. CRABTREE. Conflict of interests.

Mr. WHITE. We have quite a problem.

Mr. FOLEY. Do you have any idea what they are paying a good trial lawyer in Washington today when he takes a case on a per diem basis?

Mr. WHITE. I do not know but when I left Denver, the ordinary per diem rate—the major firms in Denver were certainly not large or very expensive law firms out there, and the trial lawyers were quoting a figure of \$200 to \$250 a day.

Mr. FOLEY. Yes.

Mr. McCULLOCH. Mr. Chairman?

Mr. RODINO. Mr. McCulloch.

Mr. McCULLOCH. I understand a request has been made for a report from the Civil Service Commission and from the Bureau of the Budget and that these reports have not been received.

Mr. FOLEY. No, sir.

The understanding I have, Mr. McCulloch, is that the Civil Service Commission has written a report and forwarded it to the Bureau of the Budget. We have not received it as yet although we had requested it at the same time we asked the Department of Justice.

Mr. McCULLOCH. Is there complete liaison between this Committee and the House Committee on Post Office and Civil Service?

Mr. FOLEY. Yes.

Mr. WHITE. I wish to point out that the chairman of this committee requested the Department of Justice furnish its views on this legislation and we did write a letter in support of the bill. That report was cleared by the Budget and——

Mr. FOLEY. That is the report of April 19, 1961?

Mr. WHITE. Yes, sir.

Mr. RODINO. Thank you very much, Mr. White.

We appreciate your coming here and we recognize the urgency of the problem.

We assure you that our committee will get to work on this matter immediately.

Mr. WHITE. We appreciate your letting us come up, Mr. Chairman.

Mr. RODINO. Thank you very much. We shall insert in the record at this point certain data submitted by the Department of Justice.

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., April 19, 1961.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 6242) to amend section 508 of title 28, United States Code, relating to attorneys' salaries.

Section 508 now provides that the Attorney General shall fix the annual salaries of U.S. attorneys, assistant U.S. attorneys, and attorneys appointed to assist U.S. attorneys under section 503. The section provides that the salaries of U.S. attorneys shall be not less than \$12,000 or more than \$20,000, and the salaries of



## SALARIES OF ATTORNEYS IN THE DEPARTMENT OF JUSTICE 15

assistant U.S. attorneys and attorneys appointed under section 503 shall be not more than \$15,000. These salary provisions, however, are applicable only to field personnel. Special assistants to the Attorney General are limited to an annual salary of \$12,000 by section 202 of Public Law 195, 83d Congress (August 5, 1953). All other attorneys of the Department, employed at the seat of government, are subject to the salary provisions of the Classification Act.

As a result of this difference in treatment between field personnel and seat of government personnel, attorneys who are required to represent the Government in complex and often novel litigation and in the trial of major criminal cases of national importance cannot be paid adequate compensation. These dedicated public servants are called upon to try cases against the best and most highly paid legal talent in the country. To obtain and retain the caliber of personnel necessary for the adequate protection of the interests of the United States it is essential that the Congress provide a more realistic and adequate pay system.

The bill would place all attorney personnel of the Department under one salary system. It would do this by amending section 508 to provide that the Attorney General shall fix, without regard to the Classification Act of 1949, as amended, the compensation of U.S. attorneys, assistant U.S. attorneys, special assistants and other attorneys employed in the Department. It would continue to limit the compensation of U.S. attorneys to not more than \$20,000, and would limit the compensation of assistant U.S. attorneys, special assistants, and other attorneys employed in the Department to not more than \$19,000.

It is our considered judgment that a single salary administration plan extending to all of the legal personnel of the Department of Justice should be established. Enactment of this legislation would provide a uniform ceiling salary applicable to Justice Department attorneys, special assistants to the Attorney General, assistant U.S. attorneys and attorneys appointed to assist U.S. attorneys.

The Department of Justice urges enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

BYRON R. WHITE,  
*Deputy Attorney General.*

MAY 3, 1961.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The serious situation facing the Department of Justice resulting from inability to adequately compensate certain groups among our attorney personnel leads me to again urge the enactment of H.R. 6242, a bill to amend section 508 of title 28, United States Code, relating to attorneys' salaries.

As pointed out in our letter of April 19, the Department's field attorney personnel, including U.S. attorneys and assistant U.S. attorneys, are not subject to the Classification Act, while at the seat of Government the Department is bound by the restrictive limitations of the act in attempting to pay salaries commensurate with ability. Of the 46 supergrade salaries allocated to the Department proper in Washington not one is available for our trial attorneys who are the backbone of the Department's law-enforcement operations. These men who are on the firing line and stand up in court against the best attorneys in the country in cases involving millions of dollars and matters of extremely important public interest and consequence are limited to the top grade of the Classification Act, GS-15 at a starting salary of \$13,730 a year. Very often these attorneys direct and supervise U.S. attorneys in certain cases or handle cases for them, yet the U.S. attorneys can be paid up to \$20,000 a year and the assistant U.S. attorneys up to \$15,000.

Department flexibility in making necessary salary adjustments for attorney personnel under the Classification Act is seriously curtailed by limitations such as the Whitten amendment (act of November 1, 1951, 65 Stat. 758; 5 U.S.C. 43, note) which makes an employee ineligible for promotion until he has completed a year in grade, the 18-month waiting period for within-grade, one-step increases, the need to wait for a position in a higher grade to become vacant in order to make a deserving promotion and the resulting infrequency of ladder promotions, and the inability to recognize individual merit and contribution to the job except by redescribing and reevaluating a position. Incidentally, such

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promotions are costlier. For example, a raise from GS-13 to GS-14 would cost some \$1,500, whereas in the field, under present circumstances, we are able to give \$500 raises at any time with little administrative difficulty, providing we have the money. This not only provides a means for recognizing meritorious service, but is an incentive for better work and performance. Furthermore, under a salary system such as provided for in the bill, the Department would have more flexibility to attract and hold outstanding young lawyers as well as experienced trial lawyers.

Incidentally, other agencies have the authority to recognize persons with high professional skills such as doctors and scientists, and it is only reasonable that the Department of Justice should have the same authority with respect to its trial attorney personnel. These skilled and experienced attorneys represent the United States and its people in a myriad of matters involving constitutional rights, human rights, vast sums of money and natural resources, and other matters of major concern. To attract and hold the talent necessary to successfully perform such important functions, greater flexibility as to compensation is a necessity.

It is sincerely hoped that your committee will give this legislation prompt and serious consideration.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

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Attorney General.

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DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., June 23, 1961.

Hon. EMANUEL CELLER,  
Chairman, Judiciary Committee,  
Washington, D.C.

DEAR CONGRESSMAN CELLER: At the recent hearing before Subcommittee No. 5 on H.R. 6242, the Department of Justice was requested to furnish the committee with a statement of the Department's intentions and plans if the bill passes. The Department's immediate intentions are stated below, as are its longer range plans.

The purpose of the bill, which amends title 28, section 508, is to remove the rigidities of the Classification Act and to provide the flexibility which will enhance the ability of the Attorney General to recruit and train qualified lawyers. Consequently, the Department's intentions for the immediate future are to provide flexibility in specific areas, as below indicated. The Department of Justice attorneys discussed herein are exclusive of U.S. attorneys and their assistants.

It is intended in the immediate future that lawyers in the Department will remain in their present grades until and unless promoted to a higher grade and will be paid in accordance with the established general schedule of pay, including the regular step and longevity increases, until and unless the Attorney General in any individual case authorizes a salary adjustment based upon the individual's performance and the value of his work to the Department.

The Attorney General may authorize an appropriate salary increase for any lawyer in any grade, based upon the individual's meritorious performance in his work for the Department. A committee in each division of the Department, with membership including a representative of the Deputy Attorney General and the office of the Administrative Assistant Attorney General, will periodically call the attention of the Attorney General to any lawyer in the Division who deserves to be paid more than he would be paid under the Classification Act, and will suggest to the Attorney General the salary to be paid to each such individual, but not in excess of \$16,000. It is not expected that a large number of lawyers will be affected by the provisions of this paragraph.

There will be established a Department-wide committee with the responsibility, subject to the approval of the Attorney General, of determining from time to time the lawyers in each division who should be paid in excess of \$16,000 and to determine the salary to be paid each of such attorneys. Such determinations will be made on the basis of the lawyer's performance and the value of his work to the Department and will recognize only truly distinctive service to the Government. It is at this time intended that such action ultimately would affect a relatively small number of attorneys, perhaps no more than 10 percent of the

# SALARIES OF ATTORNEYS IN THE DEPARTMENT OF JUSTICE 17

lawyers in the Department, and only a fraction of this number would be affected during the first year of operation under the bill.

In order to facilitate the employment of outstanding or specialized attorneys in higher pay categories, the Attorney General will authorize their payment in accordance with the value of the new employee's work in the Department.

The Attorney General has frequent use for special assistants from whom he can obtain expert advice and service in special cases or matters of unusual concern to the Attorney General and the Department. The compensation of such special assistants, who in any event will be few in number, will be established by the Attorney General.

As a longer range goal, the Department will study and consider the adoption of a revised pay plan which would include the better features of the Hoover Commission report, which calls for fewer grades, but with a wider range of compensation within grades, retain the better features of the Classification Act, and develop a promotion and salary program which will recognize a person's legal background, ability, experience, and performance on the job.

Sincerely,

BYRON R. WHITE,  
Deputy Attorney General.

## Per annum salary rates for attorneys Department of Justice

Category	Salary limits	Authority
Seat of government positions:		
Attorneys (GS-9 through GS-15)....	\$6,435 through \$15,030 <sup>1</sup>	Classification Act of 1949, as amended.
Attorneys in supergrades: <sup>2</sup>		
GS-16.....	\$15,255 to \$16,295.....	} Sec. 505(b) Classification Act of 1949, as amended.
GS-17.....	\$16,530 to \$17,570.....	
GS-18.....	\$18,500.....	
Special Assistant to the Attorney General.	Not to exceed \$11,999..	Sec. 202 of Public Law 195, 83d Congress, 8-5-53 (67 Stat. 375).
Field positions:		
U.S. attorneys.....	\$12,000 to \$20,000.....	28 U.S.C. 508.
Assistant U.S. attorneys <sup>3</sup> .....	Not to exceed \$15,000..	Do.
Special assistants to U.S. attorneys <sup>3</sup> .....	do.....	Do.
Special assistants to Attorney General to assist U.S. attorneys. <sup>3</sup>	do.....	Do.

<sup>1</sup> Attorney appointments must be at lowest salary applicable to grade to which appointed. Highest entrance salary for GS-15 is \$13,730 with maximum of \$15,030 attainable in 6 years.

<sup>2</sup> Justice is allocated a total of 45 positions as follows:

GS-16.....	32
GS-17.....	9
GS-18.....	4

Total..... 45

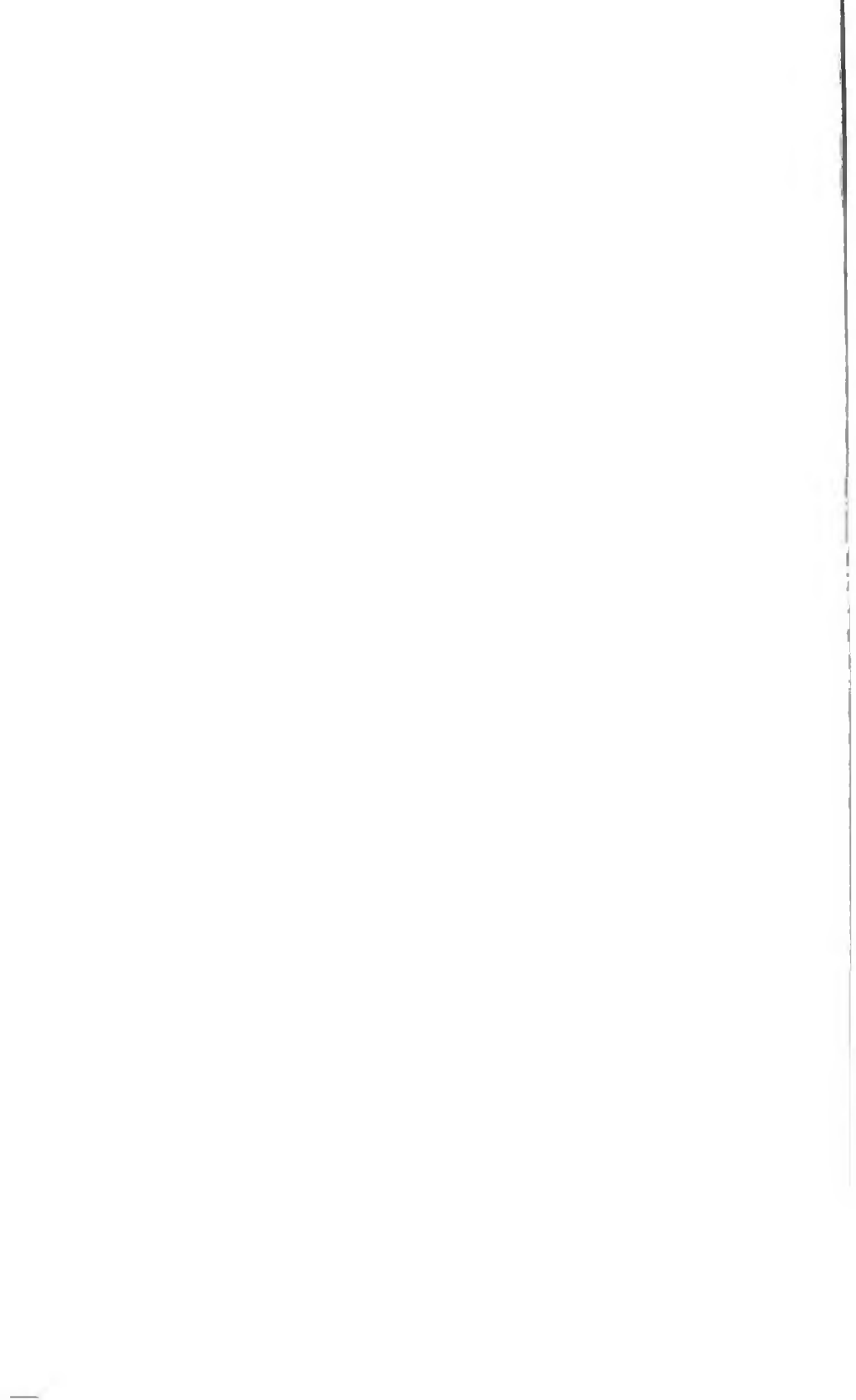
<sup>3</sup> Appointed under 28 U.S.C. 503.

Mr. RODINO. This adjourns the hearing.  
(Thereupon the hearing was adjourned at 11:15 a.m.)



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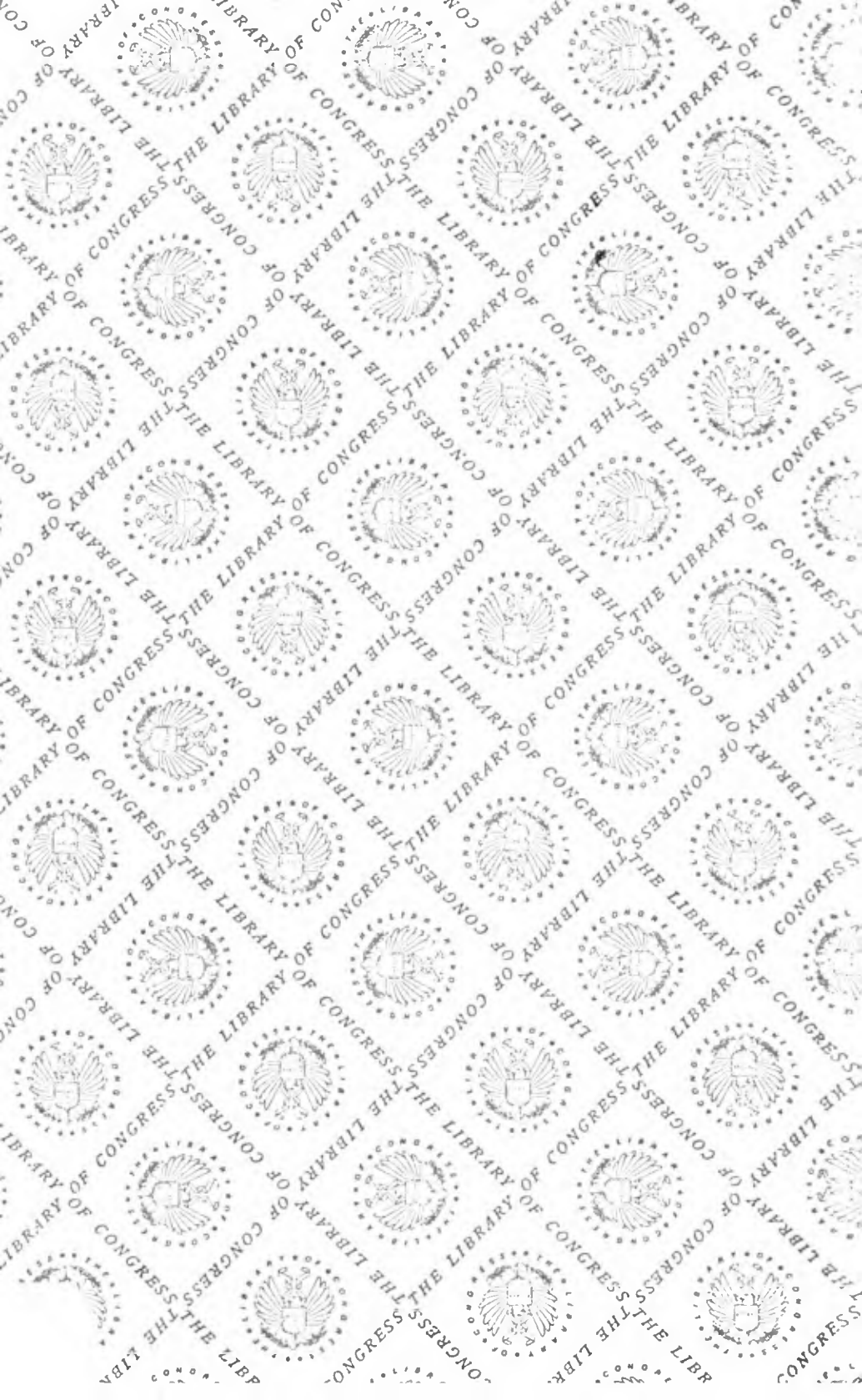














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